



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent on February 2<sup>nd</sup>, 2012, and provided a Canada Post tracking number. The tenant did not participate and the hearing proceeded in the tenant's absence.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on July 1<sup>st</sup>, 1988. The rent is currently \$975.00 per month and the tenant paid a security deposit of \$250.00.

The landlord testified that the tenant's rent is in arrears for November 2011, December 2011, January 2012, and February 2012. He stated that since serving the notice of a dispute resolution hearing, he has had several discussions with the tenants who promised that he would start making partial payments to pay his debt; the landlord stated however that the tenant called this morning to advise him that he would not be able to make any payments.

In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy served on the tenant in person on November 24th, 2011 and provided a proof of service signed by the tenant.

The landlord submitted a monetary claim as follows:

- Unpaid rent for November 2011:	\$ 975.00
- Late fee:	\$ 25.00
- Unpaid rent for December 2011:	\$ 975.00
- Late fee:	\$ 25.00
- Unpaid rent for January 2012:	\$ 975.00
- Late fee:	\$ 25.00
- Unpaid rent for February 2012:	\$ 975.00
- Late fee:	\$ 25.00
- Total:	\$4000.00

### Analysis

I accept the landlord's undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession.

Based on the landlord's testimony and documentary evidence I also accept that the tenant has not paid rent and that the landlord is entitled to recover the loss of rental income as claimed.

In accordance with the Residential Tenancy Branch interest calculator, interest accrued since July 1<sup>st</sup>, 1988 on \$250.00 is \$172.94 for a calculated security deposit totalling \$422.94 up to February 29<sup>th</sup>, 2012.

### Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$4000.00. I authorize the landlord to retain the tenant's \$422.94 security deposit for a balance owing of \$3577.06. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$3577.06.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 21, 2012.

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Residential Tenancy Branch